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Supreme Court, U.S.
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No. _____

IN THE
Supreme Court of the United States
OCTOBER TERM, 1989

ARTHUR GROVES, BOBBY J. EVANS and
LOCAL 771, INTERNATIONAL UNION UAW,
Petitioners,
v.

RING SCREW WORKS, FERNDALE FASTENER DIVISION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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QUESTION PRESENTED

When a collective bargaining agreement between an employer and a union subject to § 301 of the Labor-Management Relations Act of 1947 does not provide for final and binding arbitration to resolve contract disputes, but does permit the parties to resort to economic weapons over such disputes—and is silent on the contract's enforceability in court—is judicial enforcement of the contract in a § 301 suit thereby precluded?

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 LOCAL 771, INTERNATIONAL UNION UAW,
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RING SCREW WORKS, FERNDALE FASTENER DIVISION,
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PETITION FOR A WRIT OF CERTIORARI TO THE
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Arthur Groves, Bobby J. Evans and Local 771, International Union UAW, the plaintiffs in the district court and the appellants in the court of appeals, hereby petition for a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Sixth Circuit in *Groves v. Ring Screw Works, Ferndale Fastener Div.*, 6th Cir. Nos. 88-1452, 88-1579 (Aug. 16, 1989).

OPINIONS BELOW

The court of appeals' opinion is reported at 822 F.2d 1061 and is reproduced at pp. 1a-12a of the appendix to this *certiorari* petition (hereafter "Pet. App.")

The district court's orders granting the defendant's motions for summary judgment are unreported and are reproduced at Pet. App. 16a-29a.

JURISDICTIONAL STATEMENT

The court of appeals' opinion was entered on August 16, 1989. Pet. App. 1a. That court's order denying a timely petition for rehearing was entered on October 23, 1989. Pet. App. 15a. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves § 301 of the Labor Management Relations Act of 1947 ("LMRA"), 29 U.S.C. § 185, which provides in pertinent part as follows:

(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

Ring Screw Works ("the Company") discharged employees Arthur Groves and Bobby J. Evans; Groves for alleged absenteeism and Evans for alleged falsification of company records. Both Groves and Evans were represented for purpose of collective bargaining by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, and its Local 771 ("UAW" or "Union"). And, at the time in question Ring Screw Works and UAW had negotiated and were parties to collective bargaining agreements covering the Company's employees. Pet. App. 2a.

The collective bargaining agreements provide, *inter alia*, that Ring Screw Works may discharge employees only for "just cause." In addition the agreements include a grievance procedure which provides that "[s]hould a difference arise between the Company and the Union or its members employed by the Company, as to the

meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows." The grievance procedure then sets forth a four-step process, beginning with discussions between "the employee, his steward and the foreman of his department" and culminating in Step 4 which provides in full that "[t]he Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. This may include arbitration by mutual agreement in discharge cases only." Pet. App. 3a-4a, n.2.

Where "[a]n agreement is reached between the Company and the Shop Committee under the grievance procedure" that agreement is "binding." Where all negotiations have failed through the grievance procedure, the Union is effectively released of its no-strike pledge and the Company of its "no-lockout pledge."¹ The collective bargaining agreement is silent on the parties' right to sue over alleged conduct breaches. Pet. App. 3a-4a.

Following their discharges, both Evans and Groves sought their Union's assistance in regaining their jobs. Discussions were conducted pursuant to the collective bargaining agreement's grievance procedure. Those discussions did not result in any settlement or compromise of the grievances. The Company refused UAW's offer to take both cases to binding arbitration. And the Union did not choose to invoke its option to strike. Pet. App. 4a-5a.

Evans and Groves, joined by their Union, filed suit in state court to enforce the "just cause" provision of the collective bargaining agreements. Ring Screw Works removed both cases to federal district court invoking that court's jurisdiction under the federal labor law. In both cases, the district court granted summary judgment to the Company on the ground that plaintiffs were

¹ The collective bargaining agreement covering the Evans—but not the Groves—dispute also provided that "unresolved disputes shall be handled as set forth in [the no strike clause]." Pet. App. 4a.

bound by the "result" of the grievance procedure and therefore could not seek judicial enforcement of the contract terms in the absence of proof that the Union violated its duty of fair representation. The Sixth Circuit affirmed on the authority of its earlier ruling in *Fortune v. National Twist Drill*, 684 F.2d 374 (6th Cir. 1982). Pet. App. 4a-8a. The panel hearing this case noted, however, that "other courts in comparable circumstances have reached a decision contrary to *Fortune*" citing *Dickeson v. DAW Forest Products*, 827 F.2d 627 (9th Cir. 1987), and that "[w]ere we deciding the issue with a clean slate, we might be disposed to adopt the rationale of *Dickeson*." Pet. App. 8a, 11a.

REASONS FOR GRANTING THE WRIT

Congress' purpose in adding § 301 of the Labor Management Relations Act of 1947 to the federal labor law was to promote labor peace by assuring that collective bargaining agreements are enforceable in court. Nonetheless, a deep division has developed in the lower courts as to whether collective bargaining agreements which are silent on judicial enforcement and which establish a grievance procedure terminating *not* in a peaceful and final method of determining whether there has been a contract breach but in an option to strike and to lockout are judicially enforceable.

The Fifth and Sixth Circuits have held that under such collective bargaining agreements resort to economic weapons is the exclusive remedy. The rule in the Seventh, Ninth and Tenth Circuits is that such agreements are enforceable in court. That is also the view of the Michigan Supreme Court (under its parallel jurisdiction to hear LMRA § 301 claims).

As the decision below re-emphasizes, only this Court can reconcile this otherwise irreconcilable, longstanding division in the courts of appeals. LMRA § 301 occupies a central place in the national labor policy. This Court has

therefore repeatedly stressed the importance of maintaining a uniform federal law of collective bargaining agreements. See, e.g., *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 211 (1985) ("The interests in interpretive uniformity and predictability that require that labor-contract disputes be resolved by reference to federal law also require that the meaning given a contract phrase or term be subject to uniform federal interpretation.") All that being so, this *certiorari* petition should be granted.

I. THE DECISION BELOW SQUARELY CONFLICTS WITH THE DECISIONS OF OTHER COURTS OF APPEALS.

The decision below is, as the Sixth Circuit stated, Pet. App. 7a, in accord with that of the Fifth Circuit in *Haynes v. United States Pipe & Foundry*, 362 F.2d 414 (5th Cir. 1966). However, as the court below expressly "recognize[d], other courts in comparable circumstances have reached a decision contrary to" the decisions in the Fifth and Sixth Circuits, citing *Dickeson v. DAW Forest Products Co.*, 827 F.2d 627 (9th Cir. 1987). Pet. App. 8a.

In *Dickeson*, which involved an agreement that was identical in all pertinent respects to that herein,² the Ninth Circuit ruled:

If the grievance procedure is deemed final, the company's determination is binding, and the Union's exclusive remedy is to strike. In a case such as this

² See 827 F.2d at 629:

The agreement's grievance provision establishes a four-level procedure that culminates in a hearing before two company officials and a union representative. After the final meeting, the company must provide the Union with its determination in writing. If the Union disagrees with the company's decision, the Union is permitted to call a strike. The collective bargaining agreement provides no other remedy. Further, the collective bargaining agreement does not state expressly whether the grievance procedure is final. Collective Bargaining Agreement, Art. 18.

when the contract is silent as to whether the grievance procedure is final and the only remedy is to strike, we are very hesitant to conclude that the parties intended that the procedure be final. In *Associated General Contractors v. Illinois Conference of Teamsters*, 486 F.2d 972 (7th Cir. 1973), the Seventh Circuit was required to interpret a similar grievance procedure. It concluded the agreement was not final. We agree. See also *S.J. Groves & Sons Co. v. International Brotherhood of Teamsters*, 581 F.2d 1241 (7th Cir. 1978). Although the right to strike is protected, it is not a preferred method for resolving differences. Prohibiting access to the courts bypasses an opportunity to use reason in favor of "economic warfare." *Associated General Contractors*, 486 F.2d at 976. Although parties to a collective bargaining agreement may choose to designate strikes as the sole means of objecting to management decisions, we think they must do so expressly before we may find judicial divestment. No preference need be accorded strikes as a noble dispute resolution mechanism. Accordingly, we conclude that the grievance procedure was not intended to be final. Having exhausted the administrative process, Dickeson may bring suit against DAW under section 301. [827 F.2d at 629-30.]

The decision below conflicts also with the Seventh Circuit decisions that were cited with approval in *Dickeson*. In *Associated General Contractors v. Illinois Conference of Teamsters* ("Teamsters"), *supra*, then-Judge Stevens reasoned:

Unquestionably "the means chosen by the parties for settlement of their differences under a collective bargaining agreement [must be] given full play." See *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 566. But it is one thing to hold that an arbitration clause in a contract agreed to by the parties is enforceable. It is quite a different matter to construe a contract provision reserving the Union's right to resort to "economic recourse" as an agree-

ment to divest the courts of jurisdiction to resolve whatever dispute may arise. This we decline to do. . . . [W]e did not, and do not now, construe the agreement as requiring economic warfare as the exclusive or even as a desirable method for settling deadlocked grievances. The plain language of the statute protects the right to strike, but there is no plain language in the contract compelling the parties to use force instead of reason in resolving their differences. In our view, an agreement to forbid any judicial participation in the resolution of important disputes would have to be written much more clearly than this. [486 F.2d at 976, footnote omitted.]

The Tenth Circuit had reached the same conclusion in an early case, *United Brotherhood of C. & J. v. Hensel Phelps Const. Co.*, 376 F.2d 731 (10th Cir.), *cert. denied*, 389 U.S. 952 (1967) ("Carpenters"):

The contract does not contain a "no strike" clause, and, as we have seen, it does not provide for binding and compulsory arbitration. Thus after the contractual dispute procedure proved ineffective to resolve the dispute, the parties were free to pursue their other remedies. The device selected by the union was a work stoppage. Phelps [the employer] later has sought its remedy in the United States District Court. With different facts the forums selected could be reversed, Phelps imposing a lockout and the union bringing suit. [376 F.2d at 737.]³

The decision below is also squarely inconsistent with that of the Michigan Supreme Court in a case involving the same employer, and the same contract language. That court held that the grievance procedure at issue does *not* prevent judicial enforcement of the "just cause" clause of the contract at the behest of the employee where the union membership had voted not to strike. *Breish v.*

³ See also *id.*: "When the dispute is one arising within the provisions of the contract, it is the function of the courts, under § 301 to adjudicate the dispute, absent provisions in the contract for binding arbitration."

Ring Screws Works, 397 Mich. 586, 248 N.W. 2d 526 (1976).⁴

II. THE DECISION BELOW IS INCONSISTENT WITH THE NATIONAL LABOR POLICY.

In concluding that the agreements here "do bring about an inference that a strike, or other job action, is the perceived remedy for failure of successful resolution of a grievance absent agreed arbitration," the court below acknowledged that "[s]uch resolution, by work 'stoppage or other interference' is not a happy solution from a societal standpoint of an industrial dispute, particularly as it relates to the claim of a single employee that he has been wrongfully discharged." Pet. App. 10a-11a. And, as we have seen, the Seventh, Ninth and Tenth Circuits, while recognizing that the parties may agree that use of economic force is the exclusive method for resolving their contract disputes, have insisted upon express contractual language to achieve that result on the ground that LMRA § 301 represents a determination that resort to the courts is preferable to economic warfare. See pp. 5-7, *supra*. Only the latter approach is consistent with the LMRA.

Textile Workers v. Lincoln Mills, 353 U.S. 448 (1957) explicated Congress' objectives in adopting LMRA § 301, which, of course, provides for judicial enforcement of agreements between employers in commerce and labor organizations. Not only were unions to be bound to such agreements, but

there was also a broader concern—a concern with a procedure for making such agreements enforceable in the courts by either party. At one point the [1947] Senate Report, . . . p. 15, states, "We feel that the

⁴ Here, as in *Teamsters* and *Carpenters*, the union is suing to enforce its agreement. Thus, the present case does *not* raise the separate, and logically subsequent, issue implicit in *Dickeson* and expressly decided in favor of suit in *Breish*: viz., whether an action by an employee *alone* will lie where the union does not exercise its strike option.

aggrieved party should also have a right of action in the Federal courts. Such a policy is completely in accord with the purpose of the Wagner Act which the Supreme Court declared was 'to compel employers to bargain collectively with their employees to the end that an employment contract, binding on both parties, should be made' [353 U.S. at 453.]⁵

And the *Lincoln Mills* Court continued: "Congress was also interested in promoting collective bargaining that ended with agreements not to strike." *Id.* See also *id.* at 454, quoting S. Rep. 105, 80th Cong., 1st Sess., p. 16 (1947). In short, the statute "expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way." 353 U.S. at 455.

Lincoln Mills also establishes that the courts must look to these congressional policies in determining whether an agreement is to be construed to preclude a judicial remedy merely because the parties have reserved the right to use economic weapons to resolve their contractual disputes. See 353 U.S. at 457. And it is clear from the foregoing that it is *contrary* to the policy underlying LMRA § 301 to so interpret agreements which are silent on the subject of judicial enforcement.

In reaching the opposite result, the Fifth Circuit, in *Haynes*, *supra*, proceeded from another congressional policy, explicitly stated in LMRA § 203(d), "that in settling grievance disputes, the Act contemplated that the method agreed upon by parties to collective bargaining agreements should be the means of settling such dis-

⁵ See also *id.* at 454:

To repeat, the Senate Report, *supra*, p. 17, summed up the philosophy of § 301 as follows: "Statutory recognition of the collective agreement as a valid, binding, and enforceable contract is a logical and necessary step. It will promote a higher degree of responsibility upon the parties to such agreements, and will thereby promote industrial peace."

putes." 362 F.2d at 416. That court identified "three available forums for the resolution of disputes—contractual grievance procedure such as arbitration, or the court, or the picket line—" and observed that "the Supreme Court has consistently sanctioned the one chosen by the parties in their collective agreement." *Id.* *Haynes* drew from this Court's decisions the "common theme . . . that when a dispute arises within the scope of a collective bargaining agreement, the parties are relegated to the remedies which they provided in their agreement." *Id.* at 417.

These premises do not support, let alone compel, that court's conclusion:

The fact of the matter here is that the union processed appellant's grievance up to the point of striking. The denial of his claim then became final. We believe the law to be that his claim was thereby barred. The court has jurisdiction. *Smith v. Evening News Association, supra*, [371 U.S. 195 (1962)]. The action under the grievance procedure, here a final decision under the terms of the agreement, may be asserted in bar as an affirmative defense. [362 F.2d at 418.]

Haynes fails to explain the basis for its critical assertion that the employee's claim "became final", in the sense LMRA § 203(d) uses that term, when the union does not choose to exercise its right to strike under the agreement. 362 F.2d at 416-417. And, it is precisely in this respect that the rule in the Fifth and Sixth Circuits is contrary to the decisions of the Seventh, Ninth and Tenth Circuits.

There is, we submit, no contradiction whatsoever between the policy in favor of judicial enforcement stated in LMRA § 301 and the policy in favor of "[f]inal adjustment by a method agreed upon by the parties" stated in § 203(d). Contrary to *Haynes*, there is nothing in § 203(d) which expresses a preference for "the picket line" over "the court," 362 F.2d at 416. The congress-

sional policies underlying both § 203(d) and § 301 clearly bespeak a preference in favor of the judicial remedy over the use of economic weapons.

In a case such as this one, there has been no "final adjustment" in accordance with the contract of the question of whether Ring Screw Works violated the collective bargaining agreement's "just cause" provision, only an indeterminate failure to adjust that grievance. And the point of § 203 as a whole, like that of § 301, is "to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes." *See* § 203(a). It is thus paradoxical to draw the lesson from § 203(d) that the courts are required to read collective bargaining agreements that merely permit strikes and lockouts as requiring resort to that option and as precluding a § 301 suit to enforce the agreement according to its terms.

CONCLUSION

For the foregoing reasons, this petition for a writ of *certiorari* should be granted.

Respectfully submitted,

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APPENDIX

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UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

Nos. 88-1452, 88-1579

ARTHUR GROVES and LOCAL 771, UAW (88-1452) ;
BOBBY J. EVANS and LOCAL 771, UAW (88-1579),
Plaintiffs-Appellants,

v.

RING SCREW WORKS, a Michigan Corporation,
FERNDAL FASTENER DIVISION,
Defendant-Appellee.

Argued Feb. 21, 1989

Decided Aug. 16, 1989

Rehearing and Rehearing En Banc
Denied Oct. 23, 1989

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J. Evans, and Local 771, UAW, Plaintiffs-Appellants.

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dale Fastener Div., defendant-appellee.

Before WELLFORD, NELSON and NORRIS, Circuit
Judges.

WELLFORD, Circuit Judge.

We are concerned with two cases, consolidated on appeal, in which the district courts dismissed employee claims under § 301 of the Labor Relations Management Act holding that the collective bargaining agreement (CBA) provided that a strike or other job action was the exclusive means of grievance resolution. The applicable CBAs provided that the parties were bound if an agreement was reached at some stage of the prescribed process. If the grievance procedure failed to resolve the grievance, the union might strike, but exhaustion of the contract procedure was required before the union could take such action.

The relevant facts are not disputed. Ring Screw Works (Ring) employed both plaintiffs, Arthur Groves and Bobby J. Evans. Ring terminated Groves for allegedly excessive, unexcused absences. Ring dismissed Evans for allegedly falsifying company records. Groves and Evans, on the other hand, contend that Ring fired them without due cause and violated the CBAs. Groves and Evans brought separate lawsuits against Ring in state court for wrongful discharge. The union joined as plaintiff in both cases. Ring filed a petition for removal in both cases, claiming that the causes of action could have been brought under § 301 of the Labor Management Relations Act, 29 U.S.C. § 185.¹ Ring filed motions for summary judgment in both cases, which the district judge granted, holding that the plaintiff could not bring a cause of action under § 301 without alleging that their union breached its duty of fair representation. We affirm.

The issue in both cases is whether the grievance procedures contained in the CBAs were the exclusive means for resolving disputes, thus precluding a direct action for

¹ Section 301 preempts state law to the extent the action involves an interpretation of the CBA. See, e.g., *Allis-Chalmers v. Lueck*, 471 U.S. 202, 213, 105 S.Ct. 1904, 1912, 85 L.Ed.2d 206 (1985). See also *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 108 S.Ct. 1877, 100 L.Ed.2d 410 (1988).

breach of contract absent an allegation that the union breached its duty of fair representation.

Both CBAs prescribed a multi-step grievance procedure in which the employee, management representatives, and union representatives were called upon to resolve the dispute.² If the parties are unable to resolve the griev-

² The CBA, by which Groves was bound, stated:

Section 1. Should a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it as follows:

Step. 1. Between the employee, his steward and the foremen of his department. If a satisfactory settlement is not reached then

Step 2. Between the Shop Committee, with or without the employee, and the Company Management. If a satisfactory settlement is not reached then

Step 3. The Shop Committee and/or the Company may call the Local Union President and/or the International Representative to arrange a meeting in an attempt to resolve the grievance. If a satisfactory settlement is not reached then

Step. 4. The Shop Committee and the Company may call in an outside representative to assist in settling the difficulty. *This may include arbitration by mutual agreement in discharge cases only.*

Section 2. Grievances alleging an unjust or discriminatory discharge must be submitted in writing to the foreman involved within two (2) working days of the discharge. The Company must render a disposition within four (4) working days of the receipt of such grievance.

Section 3. The Company shall not consider the grievances of any individual employee unless it is presented in writing under the grievance procedure within five (5) working days of their occurrence, excepting discharges which are governed by the preceding section. The Company will render a disposition within five (5) working days of receipt of such grievance.

Section 4. Members of the Shop Committee and chief stewards shall be allowed the necessary time to investigate and adjust grievances promptly.

Section 5. An agreement reached between the Company and the Shop Committee under the grievance procedure shall be

ance, binding arbitration is available only "by mutual agreement in discharge cases only."

In addition, Groves' CBA included this no strike clause:

The Union will not cause or permit its members to cause, nor will any member of the Union take part in any strike, either sit-down, stay-in or any other kind of strike, or other interference, or any other stoppage, total or partial, or production at the Company's plant during the terms of this agreement *until all negotiations have failed through the grievance procedure set forth herein*. Neither will the Company engage in any lockouts until the same grievance procedure has been carried out.

Evans' CBA contained the same no strike clause but also provided that "[u]nresolved grievances (except arbitration decisions) shall be handled as set forth in [the no strike clause]."

In both cases the district court construed the CBAs to provide that if a grievance were not resolved through the grievance procedures, the union's only option was to strike. In the case of Evans, a strike vote was taken by the unit members at the plant where Evans was employed, but the vote failed to carry the required two-thirds majority; however, in Groves' case, no strike vote was taken. In both cases the district court concluded by summary judgment that plaintiffs were found by the results of the grievance procedure and/or the strike vote because the grievance procedures were exclusive, and therefore could not bring a § 301 cause of action without

binding on all employees affected and cannot be changed by any individual.

(Emphasis added). The CBA by which Evans was bound, contained similar terms but also included express time limitations and writing requirements.

alleging that the union breached its duty of fair representation.

The question before the court is whether an employee and union may bring a § 301 cause of action against the employer for discharge in violation of the CBA if: (1) the union did not breach its duty of fair representation; (2) the CBA has a grievance procedure which was exhausted without reaching a settlement; (3) the CBA permits binding arbitration only with the consent of both parties as to which the employer refused arbitration; and (4) the SBA permits a strike when the grievance procedure fails to produce an agreement or arbitration.

Section 301 of the Labor Management Relations Act (LMRA) provides:

Suits for violations of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

29 U.S.C. § 185(a).

Section 301 "is not to be given a narrow reading." *Smith v. Evening News Association*, 371 U.S. 195, 199, 83 S.Ct. 267, 269, 9 L.Ed.2d 246 (1962). Individual suits may be brought under § 301; actions thereunder are not constricted to those brought by labor unions. *Id.* at 200, 83 S.Ct. at 270. An employee may bring an action under § 301 against his employer if he has been dismissed in violation of the CBA. *Id.* at 195, 83 S.Ct. at 267. However, courts have consistently favored the resolution of labor disputes through arbitration where a CBA so provides. See *United Steel Workers of America v. American Manufacturing Co.*, 363 U.S. 564, 80 S.Ct. 1343, 4

L.Ed.2d 1403 (1960); *United Steel Workers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steel Workers v. Enterprise Wheel and Car Corp.*, 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960). Therefore, an employee is required to exhaust any grievance procedure contained in his CBA before initiating an action under § 301 against his employer. *Clayton v. International Union*, 451 U.S. 679, 101 S.Ct. 2088, 68 L.Ed.2d 538 (1981); *Anderson v. Ideal Basic Industries*, 804 F.2d 950, 952 (6th Cir. 1986); see also *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 652-53, 85 S.Ct. 614, 616, 13 L.Ed.2d 580 (1965). In addition, if a CBA contains exclusive and final procedures for the resolution of employee grievances, unlike the agreement in *Smith*, the employee's ability to bring an action under § 301 will be severely restricted. See *Smith*, 371 U.S. at 196 nn. 1 & 9, 83 S.Ct. at 268 nn. 1 & 9; see also *U.S. Bulk Cannery v. Arguelles*, 400 U.S. 351, 358, 91 S.Ct. 409, 413, 27 L.Ed.2d 456 (1971) (Harlan, J., concurring); *Ames v. Westinghouse Elec. Corp.*, 864 F.2d 239, 292 (3d Cir.1988) ("If, however, the collective bargaining agreement contains procedures for settlement of disputes through grievance and arbitration, these contractual remedies are binding on individual employees . . ."); *Hart v. Nat'l Homes Corp.*, 668 F.2d 791, 793 (5th Cir.1982).

Plaintiffs concede the exhaustion requirement and claim to have in fact exhausted the avenues of relief available to them under the grievance procedures. However, plaintiffs claim that the failure to reach an agreement after exhausting the grievance procedure allows them to proceed in federal court on a straight § 301 action against their employer.

We cannot agree. This court has previously concluded that failure to reach an agreement through a similar grievance procedure nevertheless produced a final decision and such procedure was deemed exclusive. See *For-*

tune v. Nat'l Twist Drill & Tool Division, Lear Siegler, Inc. 684 F.2d 374 (6th Cir.1982). In *Fortune*, two employees brought an action seeking federal court review of their discharges by their employer.

[I]n each instance, the grievance was filed concerning each discharge and was prosecuted by the union through a four-step grievance procedure without any agreement being reached. . . . [T]he labor contract provided that the union could strike if "all negotiations have failed through the grievance procedure." In each of these instances, while the final decision was that of management, since the labor management contract did not provide for arbitration, the union's only recourse in further prosecuting the grievance would be to strike. In each instance, the membership of the union voted not to strike.

Id. at 375. In *Fortune*, we relied upon *Haynes v. United States Pipe and Foundry Co.*, 362 F.2d 414 (5th Cir. 1966), in holding that "[w]here the parties fail to agree upon arbitration as a method of breaking a deadlocked dispute over a grievance, we are cited to no provision of federal law which gives the federal courts the power to make a decision for the parties." *Fortune*, 684 F.2d at 375.

In *Fortune*, the author of that opinion pointed to no specific language in the CBA which indicated that the result of the grievance procedure was necessarily intended to be final. In *Haynes*, on the other hand, the CBA included language indicating that the result of the fourth step would be final. *Haynes*, 362 F.2d at 415. Plaintiffs have stated that "both agreements have grievance procedures that are similar but not identical. The differences are immaterial to the issue in the case."³ The pertinent

³ Defendant does not challenge this assertion. There is a difference between the two CBAs which might have been deemed material in this controversy. Article IV, Section 4 of Evans' CBA provides

language of the CBA states: "Should a difference arise between the Company and the Union or its members employed by the Company, as to the meaning and application of the provisions of the agreement, an earnest effort will be made to settle it," followed by the grievance and then the step procedures hereinabove set out. The union may strike only if "all negotiations have failed through the grievance procedure set forth herein." The agreement does not expressly indicate whether a strike is the only option the union has if the employer refuses to submit a grievance to arbitration. We agree with defendant that *Fortune* applies and precludes plaintiffs from bringing a cause of action under § 301 against Ring for breach of the CBA. *Fortune* is especially similar to the *Evans* case in that a strike vote was taken and failed. However, we do not believe this fact to be material under *Fortune*.

We recognize that other courts in comparable circumstances have reached a decision contrary to *Fortune*. See *Dickeson v. DAW Forest Products Co.*, 827 F.2d 627 (9th Cir.1987) (contract grievance procedure silent as to whether final; held strike remedy not exclusive and employee could sue in federal court for improper discharge); *Internat'l Union, United Automobile, Aerospace and Agricultural Implement Workers of America v. Roblin Industries, Inc.*, 561 F.Supp. 288 (W.D. Mich.1983) (finding similar CBA did not produce final result, distinguishing *Fortune*). These courts were unwilling to conclude that a strike was the employees' only resort following an unsuccessful grievance prosecution unless the CBA specifically provided such.

that an "unresolved grievance shall be handled as set forth in Article XVI, Section 7," which in turn refers to a right to strike if "all negotiations have failed through the grievance procedure." (emphasis added). This might well infer an exclusive remedy of a strike, lockout, or other job action. Defendant did not argue this point in the district court, and we do not reach a decision on this basis. We recognize, however, that *Fortune* might require both CBAs to be interpreted similarly.

Plaintiffs also rely upon *Breish v. Ring Screw Works*, 397 Mich. 586, 248 N.W.2d 526 (1976), for the proposition that federal labor policy requires that the final step in a grievance procedure must be adequate to provide a procedurally fair decision. We did not approve the *Breish* rationale in *Fortune*, 684 F.2d at 375. Federal labor policy "can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play." *United Steel Workers v. American Manufacturing Co.*, 363 U.S. 564, 566, 80 S.Ct. 1343, 1345, 4 L.Ed.2d 1403 (1960), quoted in *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 562, 96 S.Ct. 1048, 1055, 47 L.Ed.2d 231 (1976). A union and an employee may choose to designate strikes and lockouts as a sole means of resolving disputes if they do so clearly and specifically. *Dickeson*, 827 F.2d at 629. See also *Huffman v. Westinghouse Electric Corp.*, 752 F.2d 1221, 1224-26 (7th Cir.1985) (rejecting *Breish* and citing *Fortune*).

Plaintiffs also rely principally upon two Supreme Court cases, *Smith v. Evening News Association*, 371 U.S. 195, 83 S.Ct. 267, 9 L.Ed.2d 246 (1962) and *Vaca v. Sipes*, 386 U.S. 171, 87 S.Ct. 903, 17 L.Ed.2d 842 (1967).⁴ The latter reiterates the individual employee's right, if allegedly discharged unjustly and contrary to the CBA, to sue the employer. *Id.* at 183, 87 S.Ct. at 913. It states further:

If a grievance and arbitration procedure is included in the contract, but the parties do not intend it to be an exclusive remedy, then a suit for breach of contract will normally be heard even though such procedures have not been exhausted. See *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 657-658 [85 S.Ct. 614, 618-19, 13 L.Ed.2d 580]; 6A Corbin, Contracts § 1436 (1962).

⁴ *Vaca* is mentioned only once in *Fortune*, and then reference is made to Justice Black's dissent. 684 F.2d at 376. *Smith* is not referred to in *Fortune*.

Vaca, 386 U.S. at 184 n. 9, 87 S.Ct. at 913 n. 9.

Vaca, on the other hand, sets out that:

... if the wrongfully discharged employee himself resorts to the courts before the grievance procedures have been fully exhausted, the employer may well defend on the ground that the exclusive remedies provided by such a contract have not been exhausted. Since the employee's claim is based upon breach of the collective bargaining agreement, he is bound by terms of that agreement which govern the manner in which contractual rights may be enforced.

....

However, because these contractual remedies have been devised and are often controlled by the union and the employer, they may well prove unsatisfactory or unworkable for the individual grievant. The problem then is to determine under what circumstances the individual employee may obtain judicial review of his breach-of-contract claim despite his failure to secure relief through the contractual remedial procedures.

386 U.S. at 184, 185, 87 S.Ct. at 913, 914.

Fortune has been cited only in one other appellate court decision and has not again been cited by our court again in a published opinion. *Huffman v. Westinghouse Electric Corp* mentions *Fortune* as holding "where grievance denial became final because the Union did not notify employer of intent to strike, employee barred." 752 F.2d at 1225. It notes that *Fortune* is in accord with *Haynes v. U.S. Pipe & Foundry Co.*, 362 F.2d 414 (5th Cir. 1966).

We believe that the CBAs in question do bring about an inference that a strike, or other job action, is the perceived remedy for failure of successful resolution of a grievance absent agreed arbitration. Such resolution, by

work "stoppage or other interference" is not a happy solution from a societal standpoint of an industrial dispute, particularly as it relates to the claim of a single employee that he has been wrongfully discharged. Were we deciding the issue with a clean slate, we might be disposed to adopt the rationale of *Dickeson*, 827 F.2d 627.

We have the precedent of *Fortune*, however, and it has been reiterated as the controlling law by our court in a number of subsequent unpublished cases. We set out the most recent expression of our court concerning *Fortune*:

This circuit has concluded, in essence that regardless of whether the contractual dispute resolution mechanism results in a "final and binding" decision, the existence of that mechanism will foreclose judicial review provided we find that it was intended to be exclusive. . . .

While we may question the wisdom of foreclosing judicial review of contracts which fail to provide for either "final" or "binding" peaceful resolution via arbitration, since the absence of such a provision cannot be taken to infer that the union (and thereby its employees) gained anything in its contract negotiations as a result, it is nevertheless well established in this circuit that a panel of this court is bound by the prior decisions of another panel of the same issues.

Mochko v. Acme-Cleveland Corp., 826 F.2d 1064 (6th Cir.1987) (unpublished per curiam); see also *Agate v. General Motors Corp.*, 798 F.2d 1413 (6th Cir.1986) (unpublished per curiam), cert. denied, 479 U.S. 988, 107 S.Ct. 580, 93 L.Ed.2d 583 (1986); *United Furniture Workers v. National Bedding*, 718 F.2d 1101 (6th Cir. 1983) (unpublished per curiam).

The CBAs in these cases did provide for specific grievance procedures, finally including arbitration, if mutually

acceptable. Absent arbitration, self-help appears to be the means to resolve an unsettled dispute. In this type of situation our circuit has held that an individual is barred from proceeding under § 301 absent an allegation of lack of fair representation by the union. The only means to reexamine this policy would be by *en banc* consideration of the *Fortune* holding and rationale.

We are compelled by the authority herein set out to AFFIRM the decision of the district court as to both Groves and Evans.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 88-1452/1579

ARTHUR GROVES and LOCAL 771, UAW, (88-1452);
BOBBY J. EVANS and LOCAL 771, UAW, (88-1579),
Plaintiffs-Appellants,

v.

RING SCREW WORKS, a Michigan Corporation,
Ferndale Fastener Division,
Defendant-Appellee.

Before: WELLFORD, NELSON and NORRIS, Circuit
Judges.

JUDGMENT

On Appeal from the United States District Court for
the Eastern District of Michigan.

THIS CAUSE came on to be heard on the record from
the said district court and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here
ordered and adjudged by this court that the judgments of
the said district court in this case be and the same are
hereby affirmed.

IT IS FURTHER ORDERED that Defendants-Appellees recover from Plaintiffs-Appellants the costs on appeal, as itemized below, and that execution therefore issue out of said district court, if necessary.

14a

ENTERED BY ORDER OF THE COURT
LEONARD GREEN
Clerk

/s/ Leonard Green
Clerk

Issued as Mandate: October 31, 1989

Costs: Appellee to Recover

Filing fee	\$	
Printing	\$	119.00
Total	\$	

15a

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 88-1452/1579

ARTHUR GROVES, *et al.*,
Plaintiffs-Appellants,

v.

RING SCREW WORKS, ETC.,
Defendant-Appellee

ORDER

[Filed Oct. 23, 1989]

Before: WELLFORD, NELSON and NORRIS, Cir-
cuit Judges

The Court having received a petition for rehearing en banc, and the petition having been circulated not only to the original panel members but also to all other active judges of this Court, and no judge of this Court having requested a vote on the suggestion for rehearing en banc, the petition for rehearing has been referred to the original hearing panel.

The panel has further reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. Accordingly, the petition is denied.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
LEONARD GREEN
Clerk

16a

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 87 CV 2989 DT
Hon. Anna Diggs Taylor

BOBBY J. EVANS and LOCAL 771, U.A.W.,
Plaintiffs,
vs.

RING SCREW WORKS, a Michigan corporation,
Defendant.

WILLIAM MAZEY P17245 Attorney for Plaintiffs

TERENCE V. PAGE P18586 Attorney for Defendant
401 South Woodward Avenue Suite 400
Birmingham, Michigan 48011
(313) 645-0800

ORDER GRANTING SUMMARY JUDGMENT

At a session of said Court held in the U.S.
Courthouse in the City of Detroit, State of
Michigan on May 25, 1988

Present: Honorable ANNA DIGGS TAYLOR
U.S. District Court Judge

This matter having come before the Court on Defendant's Motion for Summary Judgment on May 23, 1988, the Court having considered the briefs of the parties, the arguments of counsel and being otherwise fully advised in the premises;

17a

IT IS HEREBY ORDERED for the reasons stated from the bench and on the record that Defendant's motion is hereby GRANTED.

/s/ Anna Diggs Taylor
U.S. District Court Judge

Approved as to form:

/s/ William Mazey
WILLIAM MAZEY P17245
Attorney for Plaintiffs

/s/ Terence V. Page
TERENCE V. PAGE P18586
Attorney for Defendant

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action No. 87 CV 72989 DT

BOBBY J. EVANS and LOCAL 771, U.A.W.,
Plaintiffs,

v.

RING SCREW WORKS, a Michigan corporation,
Defendant.

BENCH OPINION OF THE COURT
RE DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT

EXCERPT OF PROCEEDINGS HAD in the above-entitled matter before the Honorable ANNA DIGGS TAYLOR, United States District Judge of the Eastern District of Michigan, Southern Division, at 737 U.S. Courthouse and Federal Building, 231 Lafayette Boulevard West, Detroit, Michigan, on Monday, May 23, 1988.

APPEARANCES:

WILLIAM MAZEY, ESQ.,
On behalf of Plaintiffs.

TERENCE V. PAGE, ESQ.,
On behalf of Defendant.

[2] Detroit, Michigan
Monday, May 23, 1988

- . . .

THE COURT: The Court is required by the settled law and by national labor policy to give full effect to fairly negotiated, undisputedly effective collective bargaining agreements. In this case, the parties have negotiated a contract which provides that the grievance procedure on facts such as these, where one of the members of the unit claims an unjust discharge—the grievance procedure ends with the strike vote of the union if the employer refuses to arbitrate.

Now the employer has refused to arbitrate, and the members of the bargaining unit also voted to refuse to strike. The parties have placed their value on the disposition of a question of unjust discharge clearly by the negotiation of a contract which could have included compulsory and final and binding arbitration but does not, and again by refusing to vote to strike when one of the number of the unit needs the support of all in order to have his individual grievance arbitrated.

The Court must honor the bargaining of the parties and the weight that the parties—the relative weight that they've placed on this, this item on the bargaining agenda, [3] and therefore the Court must grant summary judgment to the defendant in this case.

The grievance procedure has terminated, as it was negotiated to do, with the strike vote which was a failure to decide to strike by two-thirds of the members of the bargaining agreement.

The Court must presume—as defendant has said, the Court must presume that the members of this unit got something else instead of final and binding arbitration when they negotiated this contract.

There must be some other term of that contract that was more valuable to them than the final and binding arbitration, and the Court is not going to skew the results of the bargaining by determining that the Court will adjudicate unjust discharge regardless of the way

the parties have voted and negotiated to handle such claims.

So I must grant the judgment as requested by the defendant.

MR. PAGE: Your Honor, if I might, there was a second count in the complaint that dealt with the—

THE COURT: The defamation?

MR. PAGE: —defamation issue.

THE COURT: Do you want to say anything more on the defamation claim?

MR. PAGE: No, because we have agreed that we did [4] not suffer damage; they did defame us.

THE COURT: All right. The union has failed to state a cause of defamation in this matter, and that claim is also dismissed.

So I'll look forward to hearing more about this issue, I'm sure.

MR. PAGE: Thank you, Your Honor.

MR. MAZEY: Thank you.

THE COURT: Thank you.

(Motion concluded.)

CERTIFICATE OF COURT REPORTER

I, LEIF ERIK ANDERSON, Official Court Reporter for the United States District Court for the Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that foregoing proceedings were had in the within entitled and numbered cause on the date hereinbefore set forth, and do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/ Leif Erik Anderson

LEIF ERIK ANDERSON, RPR-CM, CSR-2569
Official Court Reporter,
U.S. District Court, Eastern District
of Michigan, Southern Division.

Dated: Detroit, Michigan,
June 20, 1988.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Case No. 87-CV-2988-DT

Hon. Julian A. Cook, Jr.

ARTHUR GROVES and LOCAL 771, U.A.W.,
Plaintiffs,

v.

RING SCREW WORKS, a Michigan corporation,
FERNDAL FASTENER DIVISION,
Defendant.

WILLIAM MAZEY P17245
Attorney for Plaintiffs

TERENCE V. PAGE P18586
Attorney for Defendant
401 South Woodward Avenue Suite 400
Birmingham, Michigan 48011
(313) 645-0800

ORDER GRANTING SUMMARY JUDGMENT

At a session of said Court held in the U.S.
Courthouse in the City of Detroit, State of
Michigan on April 8, 1988.

Present: Honorable JULIAN A. COOK, JR.
U.S. District Court Judge

This matter having come before the Court on De-
fendant's Motion for Summary Judgment on April 5,
1988, the Court having considered the briefs of the

parties, the arguments of counsel and being otherwise
fully advised in the premises;

IT IS HEREBY ORDERED for the reasons stated
from the bench and on the record that Defendant's mo-
tion is hereby GRANTED.

/s/ Julian A. Cook, Jr.
U.S. District Court Judge

Approved as to form:

/s/ William Mazey
WILLIAM MAZEY P17245
Attorney for Plaintiffs

/s/ Terence V. Page
TERENCE V. PAGE P18586
Attorney for Defendant

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil Action #87 CV 2988 DT

ARTHUR GROVES and LOCAL 771, U.A.W.,
Plaintiffs,

-vs-

RING SCREW WORKS, a Michigan corporation,
FERNDAL FASTENER DIVISION,
Defendant.

JUDGE'S RULING ON MOTION FOR SUMMARY
JUDGMENT

Proceedings held in the above-entitled matter, before
the HONORABLE JULIAN ABELE COOK, JR., U.S.
District Judge, at 237 U. S. Courthouse and Federal
Building, Detroit, Michigan, on Tuesday, April 5, 1988.

APPEARANCES:

WILLIAM MAZEY, ESQ.

Appearing on behalf of Plaintiffs.

TERENCE V. PAGE, ESQ.

Appearing on behalf of Defendant.

[2]

Detroit, Michigan
Tuesday, April 5, 1988
Afternoon Session

* * *

THE COURT: On July 20, 1987 the Plaintiffs
Arthur Groves and Local 771 of the UAW filed a com-
plaint in the Oakland Circuit Court against the De-
fendant Ring Screw Works, a Michigan corporation. The
Plaintiffs note in part that the individual Plaintiff Ar-
thur Groves, quote, "was discharged by Defendant on
April 22, 1987 without just cause and thereby breached
the collective bargaining agreement and the employment
contract of Plaintiff Arthur Groves." The Plaintiffs
thereafter charge Defendant with having breached their
contractual responsibilities to the Plaintiff local and hav-
ing defamed the individual Plaintiff, who allegedly suf-
fered damage as a result of the improper activities and
actions by the Defendant. The matter was subsequently
removed to this court by the Defendant, who now sub-
mits a motion for summary judgment pursuant to Rule
56 of the Federal Rules of Civil Procedure. The Plain-
tiffs have filed pleadings in opposition, thereby creating
an issue which must be resolved by this Court.

The Plaintiff Groves was terminated by the Defendant
on April 22, 1987 after an extended period of [3] ab-
sences, according to the Defendant. Despite the conten-
tions of the Defendant, Groves asserts that the—his
absences were legitimate and were based for legitimate
medical causes. Because the differences between the two
entities could not be resolved, Groves utilized the pro-
visions of the collective bargaining agreement and sub-
mitted his complaint to the grievance procedure that had
been outlined and authorized by the collective bargaining
agreement. Throughout the steps the matter was unre-
solved in that the Defendant steadfastly refused to rein-
state Groves to his former position. At the conclusion of
Step 4, the request for an arbitration of the issue in con-
troversy was declined by the Defendant. Thereafter, rep-

representatives of Local 771 met to determine if a strike vote should or should not be authorized. On May 31, 1987, the membership of the Plaintiff local voted not to strike on the basis of Groves' alleged improper discharge. As a result of the decision by the membership, Groves instituted the instant action to which reference has been made.

The instant motion which has been brought by the Defendant asserts that a judgment should be entered in its favor because, one, quote, "Groves may not obtain a judicial remedy for his alleged wrongful discharge because he has not claimed his union breached its duty of [4] fair representation and cannot upset the finality of his contractual grievance procedure," end of quote, and, two, quote, "Plaintiff union cannot recover for defamation because it cannot state a prima facie case therefor. Summary judgment is also warranted because the union has admitted no damage to its reputation occurred as a result of the incidents involving Plaintiff Groves."

In response, there does not appear to be any reaction from the Plaintiffs with regard to the Defendant's assertion, namely; the defamation issue. Thus, it would appear that there has been an implicit concession by the Plaintiffs to the defamation issue. The Court believes that, in the absence of a response and, more importantly, because it believes that the Plaintiffs have not set forth facts which would establish the requisite elements of defamation under the *Rouch* versus *Enquirer and News of Battle Creek* case. Thus, the Court will grant summary judgment in favor of the Defendants as relates to the defamation issue.

We turn now to the first issue which had been raised by the Defendant in its motion for summary judgment and an issue about which the parties have argued most strenuously today, namely; the alleged violation of the just cause provision of the collective bargaining agreement.

[5] The Defendant in its Rule 56 motion argues, in essence, that the Plaintiff Groves cannot come to this Court under Section 301 of the Labor-Management Relations Act inasmuch as the union has set up a mechanism for a final dispute resolution. It should be noted that the Plaintiff has argued that this provision within the collective bargaining agreement does not provide a final—a provision for a final dispute and notes that it would be inequitable, if not illegal, for the parties and, indeed, the Court to preclude an injured party from proceeding to air his differences with the Court—

(Off the record.)

THE COURT: The Defendant relies upon *United Steelworkers of America* versus *American Manufacturing*, 363 U.S. 564, decided in 1960. There is an exception to the *Steelworkers* rule in which an aggrieved party, a Plaintiff also sues his union for breaching its duty of fair representation. However, the exception to the *Steelworkers* rule is not applicable here in that there is no evidence that the individual Plaintiff Arthur Groves has sued his own union and, more specifically, there is no contention by Groves that the union violated its duty of fair representation. Thus, the Court determines that the exception to which reference has been made is not applicable here.

[6] There is a case which was decided by the Michigan Supreme Court in 1986, *Breish, B-r-e-i-s-h*, versus *Ring Screw Works*, 397 Mich. 586, which adopted a holding that would appear to support the contentions of the Plaintiff. In that case the Court determined that an individual who has been bound by a collective bargaining agreement could, nevertheless, sue his employer without suing the union when the collective bargaining agreement did not make any provision for arbitration. The facts in *Breish* appear to be clearly on point factually and substantively here. Ordinarily, the *Breish* case would be dispositive of the controversy. However, the 6th Circuit in 1982, sev-

eral years prior to the rendition of *Breish*, rendered a decision which runs counter to the Michigan rule. Thus, it is the 6th Circuit standard and ruling which must apply here as opposed to the Michigan ruling. Thus, the Court must determine that in the absence of a—strike that—must hold that the absence of a mandatory arbitration provision does not alter the finality of the grievance proceedings. The Court also cites the *United States v. Hendricks*, 752 F 2d 1226, a 7th Circuit case, which was decided in 1985.

This Court believes that, contrary to the assertions of the Plaintiffs, that the *Vaca* versus *Sipes* and the *Smith* versus *Evening News* cases, to which [7] reference was made during the oral argument, are not applicable here and do not give an instruction to the Court as to its findings.

Thus, this Court concludes that, notwithstanding the alleged wrongful act by the Defendant, that the union and management, at a time prior to the alleged incident, entered into a contractual relationship which formed the basis for the collective bargaining agreement. This Court determines that the collective bargaining agreement did provide for a finality of the grievance procedure and that the alternative action—namely, the right of strike by the workers—was specifically addressed and declined by them. To do otherwise would, in the judgment of this Court, not only circumvent the presumed intent of the parties, but would have the effect of nullifying, in part, the bargaining process that was engaged in by the parties prior to the discharge of Arthur Groves by his employer. Therefore, the Court will and does determine that the Defendant's motion for summary judgment must be granted, and the Court will enter an appropriate order.

Thank you.

(Proceedings adjourned at 3:38 p.m.)

CERTIFICATE OF REPORTER

STATE OF MICHIGAN)
) ss.
COUNTY OF WAYNE)

I, DENISE A. MOSBY, Official Court Reporter, in and for the United States District Court in the Eastern District of Michigan, Southern Division, do hereby certify that I reported stenographically the foregoing proceedings at the time and place hereinbefore set forth; that the same was thereafter reduced to typewritten form under my supervision by means of computer-assisted transcription; and I do further certify that this is a true and correct transcription of my stenographic notes so taken.

/s/ Denise A. Mosby
DENISE A. MOSBY, RPR-CSR
Official Court Reporter

DATED: June 26, 1988